UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 4 1981

A-76-01
II-A-663

OFFICE OF
AIR, NOISE, AND RADIATION

MEMORANDUM

SUBJECT: EPA Noise Regulatory Actions - Decision Memorandum

FROM: John M. Ropes
Acting Director
Office of Noise Control Programs (ANR-471)

TO: Kathleen M. Bennett
Assistant Administrator
for Air, Noise and Radiation (ANR-443)

In your September 28 approval of the phase-out plans for the Noise Program you requested additional details on the "de-identification" process by which the Agency would terminate rulemaking activities for certain products identified, under the Act, as major sources of noise requiring Federal regulation.

Because of the legal implications associated with the "de-identification" process, I requested guidance from General Counsel. Ken Feith and I have had detailed and continuing discussions with Counsel and I believe their recent memo to you sets forth the range of regulation termination options available to the Administrator, and their attendant legal implications.

We have delayed the preparation of Federal Register Notices that propose termination of regulation development activities pending your receipt of Counsel's opinion and your decision on the most appropriate basis to propose these terminations.

In consideration of Counsel's discussion of options available to the Administrator, I recommend the adoption of the alternative that will effect the temporary "withdrawal" of specific products from the list of identified "major sources of noise." The basis for this temporary withdrawal is current national economic considerations and the Agency's environmental regulation priorities in light of current budget restraints. Such withdrawals would not imply that the levels of noise from these products are adequately protective of public health or welfare, thus removing them as major noise sources. Rather, the temporary withdrawal leaves the door open for the Administrator to reconsider the development of appropriate noise regulations in light of other environmental priorities, available resources, the effectiveness of State and local noise control programs, and voluntary actions that may be taken by the potentially affected industries. Further, this approach would not set de facto health or welfare criteria that would adversely impact existing regulations or prejudice future regulatory actions by EPA, State or local governments. This approach would result in:

a. The withdrawal of two proposed noise emission regulations; wheel and crawler tractors, and buses.

b. The withdrawal of six products from the list of products identified as major sources of noise. The products are: wheel and crawler tractors, buses, power lawnmowers, truck transport refrigeration units, pavement breakers and rock drills.

In addition to the above withdrawal actions, I recommend that we propose to rescind the existing truck mounted solid waste compactor noise emission regulation. The grounds for rescinding this regulation are that industry no longer believes national uniformity of treatment is essential and based on recent public claims that these products can be more effectively controlled at the State or local level. This proposed rescission would be viewed favorably in Congress, the Council of Economic Advisors, the Office of Management and Budget, the President, State and local governments, and industry.

I further recommend that the Agency provide the minimum 30-day public comment period, required by the Administrative Procedures Act, on all of the above proposed withdrawal and rescission actions.

I believe my recommendations are consistent with Counsel's opinion. On this assumption, I am confident that final regulatory withdrawal actions can be completed prior to September 30, 1982, if we receive approval to proceed by December 7th.

DECISION:

Approve: Kathleen M. Bennett Date: 12/6/82

Disapprove: _____ Date: _____

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